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HUMAN RIGHTS COMMITTEE

Fifty-third session

SUMMARY RECORD OF THE 1394th MEETING

Held at Headquarters, New York,
on Thursday, 23 March 1995, at 3 p.m.

Chairman: Mr. AGUILAR

later: Mr. EL-SHAFEI
(Vice-Chairman)

later: Mr. AGUILAR
(Chairman)

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of New Zealand (continued) (CCPR/C/64/Add.10; HRI/CORE/1/Add.33)

1. At the invitation of the Chairman, Mr. Keating, Ms. Rush and Mr. Rata (New Zealand) took places at the Committee table.

Constitutional and legal framework within which the Covenant is implemented, right to self-determination, state of emergency, non-discrimination and equality of the sexes (articles 1, 2, 3, 4 and 26 of the Covenant) (section I of the list of issues) (continued)

2. Mr. KEATING (New Zealand), replying to a question raised by Mrs. Evatt concerning legal remedies, referred to two cases in which the Court of Appeal had determined that damages could be sought in respect of a breach of the New Zealand Bill of Rights Act 1990. In one case the Court had found that, by its accession to the first Optional Protocol of the Covenant, New Zealand had accepted individual access by its citizens to the United Nations Human Rights Committee in the case of violations of rights under the Covenant for which they had been unable to obtain a domestic remedy.

3. With regard to Mr. Lallah's request for more information about criticisms of the Bill of Rights, he said that there had been considerable scepticism on the part of the public as to the desirability of concretizing human rights in law. A desire for flexibility had led to overt reluctance to the permanent entrenchment of a set of principles devised by a particular set of people at a particular time and reflecting a particular set of cultural values. Most of the early jurisprudence since the adoption of the Bill of Rights had related to criminal procedural issues, and had caused considerable public alarm, for the Bill of Rights was perceived as having created more loopholes for defendants in criminal cases.

4. As to the concern expressed regarding the status accorded to the Bill of Rights, he said that it actually had a slightly higher status than any other law, since it included a provision requiring the Attorney-General to make a statement to Parliament regarding any possible inconsistencies between proposed legislation and the Bill of Rights. Accordingly, any attempt to repeal it would most likely be subject to public scrutiny, which was not necessarily true for other laws.

5. No consensus had yet been reached as to what entity would replace the Privy Council upon its abolishment, although the Court of Appeal enjoyed a very good reputation and played a vital role in the judicial hierarchy. More information on the matter would be provided in the next periodic report.

6. The words "or other status" had not been included in the list of grounds for non-discrimination owing to the absence of a broad consensus in society as to what should be outlawed and to the perception that "other status" was too vague. The situation must be viewed in the context of the public's attitude towards the Bill of Rights, which he had outlined earlier.

7. Turning to the questions put by Mr. Prado Vallejo, he said that the fact that judges could not strike down legislation which ran counter to the Covenant did not constitute a weakness in terms of article 2 of the Covenant. New Zealand, like other common law countries, did not interpret article 2 of the Covenant as requiring the creation of a supreme law establishing the judiciary as the highest authority in matters relating to international legal obligations. It was for the Government to determine how the country's international legal obligations were to be met, whether by legislative measures, a mixture of legislative and judicial intervention, or administrative measures.

8. As to the legal status of terrorism legislation, he said that the Government was committed to replacing it, and would do so in conjunction with other important amendments to be proposed by the Law Commission to elements of the criminal law dealing with police powers. The final report of the Law Commission was expected to be ready fairly soon.

9. With regard to the issue of de facto discrimination, he pointed out that social and economic conditions differed among various elements of the population. However, his delegation could not accept the designation of those differences as constituting discrimination. The fact that the law provided that discrimination was illegal even as differing social and economic conditions existed in society did not itself mean that discrimination had occurred.

10. Turning to the questions put by Mr. Kretzmer, he said that the Bill of Rights did not include an exhaustive statement of human rights standards, given the considerable reservations expressed by the public regarding that instrument. The Government had focused on those aspects which had had the best chance of being enacted into law. Language had not been included among the potential areas of discrimination because to have done so would have established the equality of all of the many languages spoken in his country, a step which would not have received adequate public support.

11. With regard to discrimination in employment, he noted that all Governments exercised some discretion as to which individuals were employed to maintain national security. In the case of personnel employed outside New Zealand, Governments must endeavour to ensure that the personnel assigned to diplomatic missions abroad would observe local laws. Moreover, since standards differed from country to country, an employer could not be required by law to ensure equal hiring standards for employment overseas where a foreign legal system prevailed.

12. In reply to Mr. Klein's questions regarding section 5 of the Bill of Rights Act, he said that while theoretically it might be possible to use that section to justify a limitation of rights under section 20 of the Human Rights Act 1993 and, by reference, under article 27 of the Covenant, on the grounds that the limitation was justified by the requirements of a free and democratic society,

it was essential to read section 5 in the context of section 6, which instructed the courts to give preference to a meaning consistent with the Bill of Rights and the Covenant. The intent of the limits implied in section 5 of the Bill of Rights Act was to narrow what New Zealand deemed to be unreasonably broad exemptions in the covenants themselves. Similarly, if an issue of proportionality arose between freedoms and rights that were in conflict at any given time, the meaning set out in section 6 of the Bill of Rights would apply.

13. As to whether any mechanism for conducting periodic reviews of the Bill of Rights and ensuring its consistency with the Covenant was in place, New Zealand reported almost every year to one of the various human rights treaty bodies, and each such appearance afforded an occasion to review the Bill of Rights and take stock of its compatibility with the human rights instrument in question. Since the International Covenant on Civil and Political Rights was the instrument encompassing the widest range of rights, the ongoing reporting process under that instrument provided for a fairly thorough review.

14. The issue of exhaustion of local remedies did not really arise in New Zealand because there was no possibility of appeal. The courts must accept the laws as they stood and did not have the capacity to challenge a statutory provision in any way. The new procedure introduced in section 7 of the Bill of Rights, allowing the Attorney-General's Office to alert the Legislature to a bill's inconsistency with the Bill of Rights did not alter that unavailability of local remedy, although it would give greater transparency to the legal issues involved, so that instances of further remedy, such as the Committee, would be in a better position to deal with cases brought to them.

15. The New Zealand Human Rights Commission and the Attorney-General clearly had different roles, a situation which enhanced the likelihood of public debate on controversial issues. The Commission, a non-political agency, had the duty to inquire into problems relating to laws and regulations, while the Attorney-General, a law officer with his own independent responsibilities, performed the political function of reporting to Parliament and the Prime Minister.

16. His delegation had requested the Government for further details so that it could properly answer the questions about human rights in Tokelau.

17. There was no reason why a representative of the New Zealand Human Rights Commission could not be a member of the delegation reporting to the Committee, as had sometimes been the case when his Government reported to other human rights bodies.

18. Mr. BÁN said that paragraph 26 (e) of the report stated that the remedies provided under the Human Rights Act 1993 and the Employments Contract Act 1991 for sexual harassment were alternative and a choice must be made by the complainant of one or the other. More information would be appreciated on the differences between the remedies and how a choice was made. The reporting State should inform the Committee how women of a modest cultural background, for example, were assisted in choosing between the two remedies.

Right to life, treatment of prisoners and other detainees, liberty and security of the person and right to a fair trial (articles 6, 7, 9, 10 and 14) (section II of the list of issues)

19. The CHAIRMAN read out section II of the list of issues, namely: (a) measures taken to reduce the high post-natal mortality among Maori and the effectiveness of those measures in reducing it since consideration of the second periodic report; (b) information on investigations by the Police Complaints Authority of alleged cases of mistreatment of persons or of violation of rules and regulations governing the use of weapons by the police and other forces; (c) clarification of the evidence that was relevant in determining whether an offender was likely to repeat an offence of sexual violation, the standard of proof that applied and the compatibility of the provisions relating to preventive detention with articles 9 and 14 of the Covenant, particularly with respect to the presumption of innocence; (d) information on any measures taken to implement the recommendations contained in the report of the Ministerial Inquiry into Management Practices at Mangaroa Prison, and on whether the officers at Mangaroa prison responsible for the mistreatment of prisoners had been prosecuted under the Crimes of Torture Act; (e) information on the experience to date with the change of structure of prison sentences under the Criminal Justice Amendment Act (1987), concerning in particular the social rehabilitation of prisoners; (f) clarification as to whether the Penal Institutions Amendment Bill 1993 had been adopted and, if so, the compatibility of the proposed introduction of private contracting of prison management with the provisions of the Covenant, and the recourse available to prisoners who claimed that their rights had not been respected; (g) information on measures taken to address the remaining shortcomings with regard to the full implementation of the United Nations Standard Minimum Rules for the Treatment of Prisoners, and clarification as to whether the relevant regulations and directives, including the Criminal Justice Briefing Notes of the Department of Justice, were known and accessible to prisoners in English and Maori.

20. Mr. KEATING (New Zealand) said that it had been a matter of long-standing concern to his Government to reduce the infant mortality rate especially among Maori. It was encouraging that there had been a proportionately higher reduction among Maori (from 16.41 deaths per 1,000 live births in 1990 to 14.3 per 1,000 in 1993) as compared with non-Maori (7.4 per 1,000 to 6.5 per 1,000). A three-year work programme had been devised with specific goals for each phase of the Maori life-cycle: strengthening Maori family structures, improving their individual and collective well-being, enabling them to purchase and provide their own health-care services and promoting health care. There were also policy guidelines against child abuse. It was too early to tell how effective the services had been, but in setting them up the Government had consulted widely with the Maori themselves.

21. With regard to section II (b) of the list of issues, the Police Complaints Authority had, between 1989 and 1991, received 491 complaints against the use of force by the police and upheld 462, resulting in two prosecutions for assault and one conviction. Between 1992 and 1994, it had received 1,020 complaints and upheld 77 of them. Since its establishment in 1989, the Authority had investigated three incidences of death and four of serious bodily harm caused by police use of firearms, and had decided in favour of the police in all of the

former and two of the latter, with two still under review. The Authority's second and third annual reports had been provided to the Committee.

22. With regard to section II (c) of the list of issues, it should be borne in mind that paragraph 58 (a) of the report referred to the stage at which a court dealt with sentencing and not with the establishment of guilt, at which time the accused was to be presumed innocent. Section 75(3)(a) of the Criminal Justice Amendment Act governed the imposition of a sentence of preventive detention on persons convicted of sexual violation for the first time but deemed likely to commit a repeat offence: a court could only impose such a sentence if on the basis of a psychiatric report, it was satisfied that there existed a substantial risk that upon release the offender would again commit an offence such as sexual violation, incest, sodomy, attempted murder and the like. Preventive detention was not automatic in such cases, and it could never be imposed on offenders under 21 years of age. To determine the fitness of such a sentence in recent cases, the courts had considered, inter alia, medical evidence, the repetitive nature of the crime, the offender's proclivity or inability to control himself as established by evidence of past social deviancy, or the type of victim involved. The Court of Appeal had held that proof beyond a reasonable doubt was not required when determining the likelihood of recidivism in such cases; the court had only to deem the sentence expedient for the protection of the public.

23. With regard to section II (d), 48 of the 60 recommendations made by the independent commission of inquiry set up by the Government to investigate the practices at Mangaroa prison (para. 62) had been implemented, and the remainder would be implemented by year end. Departmental disciplinary proceedings had been brought: 17 officers had been suspended, 12 dismissed and 4 subsequently returned to duty with warnings. The Employment Tribunal, to which the dismissed officers had appealed, had ruled that 6 of the 12 dismissed must be reinstated (three with warnings), four should be allowed to resign and two should remain dismissed. Three officers had in fact returned to duty and one had been transferred. Upon recommendation of the New Zealand Human Rights Commission, the investigations had been referred to the police, whose inquiries were still under way.

24. With regard to section II (e), under the former Criminal Justice Act there had been a presumption for imprisonment of persons convicted of certain serious violent crimes. After the 1987 Amendment to the Criminal Justice Act had come into force (para. 58), the number of sentences of imprisonment for such crimes had risen steadily since 1989, reaching a peak in 1993 and declining thereafter, as indicated in the separate data that had been provided to the Committee. That Amendment had also lengthened the time spent in prison for certain violent crimes, so that offenders were released on parole only after serving two thirds rather than one half of their sentences.

25. To deal with violent offenders, new prison systems had been introduced in the late 1980s: under the unit management system, offenders were accommodated in small units which interacted directly with the prison staff; under the case management system, programmes and services were planned to ensure humane treatment and an effective return to the community, the primary concern being to reduce the likelihood of recidivism. Under the 1993 Amendment to the Criminal Justice Act, violent offenders were also individually reassessed towards the end

of their sentences by a district prisons board or the parole board, which imposed special post-release conditions aimed at protecting others or at rehabilitating the prisoner through placement in special programmes.

26. As concerned section II (f), the Penal Institutions Amendment Bill had indeed been enacted on 1 March 1995. Section 41 (e) of the new Act provided that actions performed by penal and security staff should, for the purposes of the New Zealand Bill of Rights, be deemed to be actions performed by the executive branch of the Government, making all inmates subject to the guarantees of the Bill of Rights, which reflected those set out in the Covenant. Also, pursuant to the Penal Institutions Regulations, which had been amended to comply with the amended Act, the superintendent of every institution was required to see all prisoners as soon as possible after arrival and ensure that they understood the provisions of the new Act and Regulations, including the proper method of making complaints.

27. With reference to section II (g) of the list of issues and paragraph 61 of the report, it should be added that one argument for the mixing of adult and juvenile prisoners contrary to Rule 8 (d) of the United Nations Standard Minimum Rules for the Treatment of Prisoners was the impracticality of doing otherwise because of the smallness of the prisons and the distance between prisons in New Zealand, if prisoners were to be kept near their communities. The requirement for individual cells under Rule 9 (1) had been deemed inappropriate where the risks to some inmates could be reduced by having someone with them at all times and where the culture of a significant proportion of inmates supported group living.

28. In compliance with Rule 12 regarding sanitary installations, the large majority of New Zealand prison cells now had individual toilets as a result of the upgrading of prison facilities in recent years.

29. In accordance with Rule 69, all inmates could contribute to the development of a case management plan that addressed the causes of their offence and their effective reintegration into the community. Pursuant to Rule 82, inmates with a mental disorder could be transferred to a psychiatric institution managed by the health services. In addition, a number of units had been established in the prison system to provide treatment to those who were not eligible to be transferred but required support.

30. In accordance with Rule 88, the New Zealand Penal Institutions Regulations allowed the Secretary for Justice to designate any institution or part of an institution as a place where inmates awaiting trial were required to wear institutional clothing, if the Secretary considered that that would benefit the institution's security. At present, the only remand prisoners required to wear institutional clothing were those in the maximum security remand unit at Mt. Eden Prison, who were required to wear prison track suits for security reasons. Elsewhere, remand prisoners could wear prison clothing if they did not have suitable clothing of their own.

31. The revised prison service manual was based on a quality management approach that specified standards and procedures rather than giving instructions. The manual was readily available for all who wished to see it.

In addition, inmates could obtain any information available within the system unless it was restricted under the Official Information Act.

32. Mrs. EVATT said that she still had considerable concern about the practice of sentencing for preventive detention, which appeared to represent an additional punishment imposed on an inmate for something he might do in the future. The decision to impose preventive detention was based on opinions and assessments of probability, which was not a standard beyond reasonable doubt. It was very difficult to reconcile that practice with the provisions of the Covenant, particularly in respect of the presumption of innocence. The reporting State should indicate whether there was a specific appeal procedure for avoiding preventive detention.

33. With regard to the inquiries into police violations of rules, it would be interesting to learn whether prisoners whose rights had been violated had had recourse to remedies and, if so, what the results had been. She continued to be concerned about the application of the Standard Minimum Rules in New Zealand. It was gratifying to learn, however, that the Government was committed to improving prison standards in the various institutions, about which there had been some very adverse reports. The Committee would like to know whether prisoners had recourse to a prison ombudsman and appropriate remedies if their rights were violated in the private prisons. It would be useful to know whether there were any differences in the rights of prisoners held in private prisons and what mechanisms existed to ensure that minimum standards were respected by the management of those institutions.

34. Lastly, paragraph 45 of the report referred to a charge of "dealing in slaves". The reporting State should explain whether that was a common practice and how the rights and interests of the women involved could be protected.

35. Mrs. HIGGINS said that the use of the expression "preventive detention" in paragraph 58 (a) of the report was unusual in that it seemed to include the possibility of imposing an added indeterminate sentence based on the likelihood of recidivism. While she was aware of instances of repeat offences by sexual offenders following their release from prison, an indeterminate sentence of preventive detention might be imposed even on first-time offenders. That suggested that the purpose of imprisonment was essentially to remove persons indefinitely from circulation, on the basis of their initial offence. Accordingly, it would be useful to know whether it was possible to lodge an appeal against a sentence of preventive detention and whether such sentences were reviewed subsequently by psychiatrists and other specialists to determine if they were still appropriate. The offences listed included indecency with males and buggery, and she wished to know whether they related also to minors and whether such acts were currently prohibited under criminal law.

36. Mr. ANDO asked for further information on the functions of the Director of Mental Health (para. 50): it would be interesting to learn what his qualifications were and whether decisions taken by him were reviewed by a monitoring body composed of psychiatrists and lawyers. He also wished to know whether the relatives or guardians of mentally disturbed persons had recourse to the courts in such matters.

37. Paragraph 57 of the report stated that no person could be convicted of an offence committed between the ages of 10 and 13 unless at the time the offence was committed he had known that the conduct was "wrong or that it was contrary to law". The reporting State should indicate who decided whether a child knew that the conduct was wrong or contrary to law, how such a decision was taken and what remedies were available for victims of such offences.

38. Paragraph 80 of the report referred to the family group conference process in dealing with young offenders. Further information would be appreciated on the persons taking part in the process, the purpose of the conference and the role of the youth justice coordinator in instituting proceedings. The reporting State should also define what was meant by the phrase "unique identifiers" in paragraph 85 (xii) of the report.

39. Mr. BÁN requested additional information on the in-patient and out-patient treatment referred to in paragraph 50 of the report. It would be useful to know at what point the right to liberty as set forth in article 9 of the Covenant was restricted in the course of such treatment. The Committee also wished to know how often cases were reviewed after in-patient treatment was ordered and whether the review depended on the willingness of the patient concerned or was conducted as a matter of course.

40. According to paragraph 53 of the report, under the Children, Young Persons and their Families Act 1989, unless public interest required otherwise, criminal proceedings should not be instituted against a child or young person if there was an alternative means of dealing with the matter. He wished to know who decided on the alternative means and whether the decision was subject to recourse or an appeal by the young person or his parents or relatives. The reporting State should also indicate what alternative means were available and provide statistical data on the proportion of criminal proceedings instituted against young people and the application of alternative means.

41. Mr. FRANCIS asked the reporting State to provide a breakdown of the prison population in New Zealand according to sex and age in its next report. Further information would also be appreciated on relations between inmates and prison guards in general, the ways in which incidents were handled and prison rehabilitation programmes in New Zealand.

42. Mr. KLEIN said that the New Zealand Bill of Rights seemed to cover only some of the articles of the Covenant. Under article 24 (g) of the Bill of Rights, everyone charged with an offence had the right to have the free assistance of an interpreter if the person could not understand or speak the langauge used in court. According to general comment 13 of the Committee, article 14 of the Covenant applied not only to procedures for the determination of criminal charges but also to procedures to determine their rights and obligations in a suit at law. The reporting State should therefore indicate whether the guarantee provided for in article 24 (g) of the Bill of Rights restricted the guarantee provided under article 14 of the Covenant.

43. Mr. El-Shafei (Vice-Chairman) took the Chair.

44. Mr. KEATING (New Zealand) said that under New Zealand's legislation the word "offence" applied to both minor and major offences. Accordingly, a minor offence would also be covered by the provision in article 24 (g) of the Bill of Rights.

45. The case of Asian women prostitutes who had been brought into the country illegally illustrated a situation that the police and immigration authorities had been concerned about for some time. In reply to Mrs. Evatt's question regarding measures taken to protect the individual, the primary focus of remedial action on the part of the authorities had been to prevent such individuals from being brought illegally into the country in the first place.

Freedom of movement and expulsion of aliens, right to privacy, freedom of assembly and association, right to participate in the conduct of public affairs and rights of persons belonging to minorities (articles 12, 13, 17, 21, 22, 25 and 27 of the Covenant) (section III of the list of issues)

46. The CHAIRMAN read out section III of the list of issues, namely: (a) information regarding New Zealand's experience to date in implementing the new procedures introduced in 1991 for determining refugee status, the number of applications for refugee status received each year and the impact of the new procedures on that number; (b) information on the functions and activities of the Privacy Commissioner (para. 87) and the date of entry into force and main provisions of the data privacy bill; (c) clarification of the inconsistency between section 121 of the Films, Video and Publications Classification Act 1993 and section 26 (1) of the New Zealand Bill of Rights Act 1990; (d) in view of the enactment of the Employment Contracts Act 1991, information as to whether the Government intended to review the reservation to article 22 of the Covenant and whether the new limitations on trade unions actions to protect member interests were compatible with article 22 of the Covenant; (e) information concerning specific difficulties encountered by Maori in the enjoyment of their rights under the Covenant; (f) the accomplishments to date of bodies devoted to providing Maori with greater educational, economic and political opportunities and data concerning the number and proportion of Maori in the public and private sectors; (g) information on how the Electoral Act protected the rights of Maori, women and minority groups to take part in public affairs and definition of the term "Maori option", used in connection with the new Electoral Act 1993; (h) information on the return of State and private land to Maori, the extent of the jurisdiction of the Waitangi Tribunal and the status of Tribunal determinations as compared with settlements reached through negotiations with the Minister of Justice.

47. Mr. KEATING (New Zealand), referring to section III (a), said that new procedures for determining refugee status had been introduced in 1991, a peak year for applications, which had risen from 27 in 1987 to 1,162 in 1991. Before 1991, owing to the relatively low number of cases, there had been an informal and flexible process for handling refugee status applications and no formal appeal procedures. Following the increase in the number of applications, it had been decided that new procedures were needed and that an official appeal process should be instituted. It was interesting to note that the caseload had dropped significantly since 1991 and had remained stable at about 300 to 400 applications per year.

48. Refugee status determinations were initially considered by the Refugee Status Section, which consisted of a team of full-time, specially trained immigration officers. Over the past four years, processing had become more streamlined, and it was not believed that there was a direct causal relationship between the decline in the number of applications and the new procedures. In fact, despite the existence of the Refugee Status Appeals Authority, approximately 18.4 per cent of all applicants reapplied after an initial application had been declined. To a large degree, the decision to reconsider an application was based on whether the circumstances in the country of origin had significantly changed since the time of the previous application.

49. Referring to section III (b), he said that the functions of the Privacy Commissioner were contained in section 13 of the Privacy Act 1993. The activities of the Privacy Commissioner were outlined in the Commissioner's first annual report, which covered the eight-month period prior to June 1993. During the period from June 1993 to December 1994, the Commissioner had received 934 complaints, 51 per cent of which had been access complaints and 115 had related to the Health Code. Access complaints usually involved a request to review a decision to withhold information under the Act. Of the 934 complaints received, 414 had been resolved, 39 were being considered outside the jurisdiction of the Privacy Commissioner and 374 were being given further consideration. The proposed data privacy legislation had been incorporated into the Privacy Act 1993, which also encompassed the Privacy Commissioner Act 1991.

50. With regard to section III (c), he said section 121 of the Films, Video and Publications Classification Act 1993 made it a criminal offence for any person to possess an "objectionable" publication, whether or not that publication had been so classified at the time it was found in the possession of the accused. It was no defence to prove that the defendant had had no knowledge or no reasonable cause to believe that the publication to which the charges related was objectionable. Section 26 (1) of the New Zealand Bill of Rights Act 1990 provided that no one would be liable to conviction for an offence on account of any act or omission that did not constitute an offence by that person under the law of New Zealand at the time it occurred. The inconsistency of section 121 of the Film Video and Publications Classification Act with section 26 (1) of the New Zealand Bill of Rights Act 1990 had been drawn to the attention of Parliament by the Attorney-General. However, Parliament had decided to enact the provision notwithstanding the advice of the Attorney-General.

51. Referring to section III (d), he said that the limitations on the action trade unions could take to protect the interests of their members were minimal. The freedoms provided by the Employment Contracts Act 1991 were underpinned by employee protections. All employees, and not just union members, had access to personal grievance and dispute settlement procedures. Other minimum conditions provided by legislation included minimum wage, equal pay for men and women, parental leave, annual and statutory holidays and wage protection provisions. Under that same Act, all employees had the right to decide whether they would belong to employee organizations such as unions. The Act also provided protection against undue influence and preference in employment in relation to membership or non-membership in a union or other employees' organization. Employers must recognize employees' authorized representatives, a provision which had been confirmed by several recent court cases which had held that if an

employer wished to negotiate an employment contract, he must do so through an authorized representative. Employees and their representatives, including trade unions, were required to agree to a procedure for ratification of any settlement negotiated by their representative.

52. The Employment Contracts Act also provided for the right to take industrial action, subject to certain restrictions. Industrial action relating to the negotiation of a collective employment contract was explicitly lawful. Industrial action was unlawful in the case of personal grievances and disputes, for which adequate procedures were already available to all employees through the employment tribunals. Strikes and lockouts concerned with the issue of whether a collective contract would bind more than one employer were unlawful; however, industrial action was lawful when it related to the content of a multi-employer contract. In general, limitations on the right of trade unions to act to protect their members were designed to balance employees' right to strike with employers' right not to face strike action and economic loss as a result of the actions of other employers over whom they had no control. In that connection, the Government did not intend to withdraw its reservation to article 22 of the Covenant.

53. In response to a formal complaint forwarded by the Council of Trade Unions of New Zealand in 1993 to the Freedom of Association Committee of the International Labour Organization (ILO), that Committee had issued an interim report in March 1994 which had included a request that the Government of New Zealand should accept a direct contact mission whose purpose was to obtain further information. A direct contact mission had visited New Zealand in September 1994, and the Freedom of Association Committee of ILO had issued its final report in November 1994. The report had included four recommendations, namely: (1) that the Government should keep it informed of any relevant legal decision; (2) that the Government should initiate and pursue tripartite discussions aimed at ensuring that the Employment Contracts Act was fully consistent with ILO principles on collective bargaining; (3) that workers and their organizations should be able to call for industrial action in support of multi-employer collective contracts; and (4) that the advisory services of ILO should be placed at the disposal of the Government of New Zealand. In response to those recommendations, the Government had invited the New Zealand Employers' Federation and the Council of Trade Unions to give their considered response to the final ILO report.

54. Under section III (e), he said that the Treaty of Waitangi continued to provide the focus for the evolving relationship between Maori and non-Maori in New Zealand. The Government had continued its efforts to ensure that the rights and concerns of Maori were accorded special attention, consistent with the Treaty, and it was committed to settling all major claims by the end of the century. Such efforts could be seen in the provisions of the Maori option under the new electoral reforms.

55. Under section III (f), he drew attention to paragraph 135 of the report and said that there were 819 Kohanga-Reo centres which provided intensive training for some 13,543 children in the Maori language. In 1993, 49 per cent of all Maori children in early childhood education had been enrolled in those centres. In the primary school system, there were 38 official Kura Kaupapa Maori

programmes, in which 2,622 students were enrolled. In 1994, 379 schools other than Kura Kaupapa Maori schools had offered some form of education using Maori, catering for almost 14 per cent of total Maori enrolment. In 115 of those schools, the language of instruction was Maori for more than 80 per cent of class-time. In general, the degree of immersion in both primary and secondary schools was between 30 and 50 per cent.

56. Since the enactment of the Maori Language Act 1987, recognition of the Maori language as an official language of New Zealand had increased considerably. That was particularly visible in the public sector, where a number of agencies provided information and advertised employment opportunities in both Maori and English. The year 1995 had been declared the year of the Maori language and was intended to focus national attention on the status of that language and encourage its learning and use in daily activities.

57. The new Museum of New Zealand would establish a Maori bicultural development directorate and would seek to avoid the marginalization of Maori art and history by organizing integrated exhibitions. A new national body, the Arts Council, with responsibility for setting overall policy in the arts and apportioning funds to support arts projects and individuals, had been established. The new structure was composed of two boards of equal status, one for Maori arts (to be known as Te Waka Toi) and the other to support the arts of all New Zealanders. The key purpose of the Arts Council was to promote the arts from all sources in New Zealand, while recognizing the cultural diversity of the country and role of the arts of the Maori and the Pacific Island peoples.

58. The Government had also provided substantial funds for Maori radio and television activities. With regard to the representation of Maori in the senior ranks of public service, the following data was available: 0.7 per cent in 1991, 1.1 per cent in 1992, 1.4 per cent in 1993 and 3.5 per cent in 1994. Since 1990, there had been four Maori members of Parliament holding the four seats reserved exclusively for Maori. In addition, during 1990-1991, one Maori member of Parliament had occupied a general seat, and during 1992-1995 there had been two Maori members of Parliament holding general seats.

59. Mr. Aguilar resumed the Chair.

The meeting rose at 6.05 p.m.